Brunswick Corporation *and* Local Lodge 1813 of the International Association of Machinists and Aerospace Workers, AFL-CIO. Case 7-CA-17444(2)

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 3 March 1982 Administrative Law Judge John H. West issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order,[1] as modified herein.

The Administrative Law Judge found and we agree that Respondent violated Section 8(a)(3) and (1) of the Act by giving more severe discipline to certain employees than it gave to other employees, all of whom participated in an illegal strike, solely because the former employees were union representatives. In its recent opinion in *Metropolitan Edison Co. v. NLRB.*, 103 S.Ct. 1467, 1478 (1983), 96 LC ¶ 14, 42 (1983), the Supreme Court found "that the imposition of more severe sanctions on union officials for participating in an unlawful work stoppage violates Section 8(a)(3) [unless] a union . . . waive(s) this protection by clearly imposing contractual duties on its officials to ensure the integrity of no-strike clauses . . . ." In the instant case, Respondent relies solely on the general no-strike provision of the collective-bargaining agreement to argue that the employee union officials were bound to a higher degree of conduct than other employees in ending the unlawful strike. But the Supreme Court in *Metropolitan Edison* indicated that "we will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is 'explicitly stated.' More succinctly, the waiver must be clear and unmistakable."[2] Here, there was no such contractual waiver, and, in the absence of evidence that the parties specifically intended to waive the employee union officials' rights, we cannot accept Respondent's argument.[3] Accordingly, we adopt the Administrative Law Judge's conclusion that Respondent violated the Act by more severely disciplining union officials in the circumstances of this case.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Brunswick Corporation, Muskegon, Michigan, its officers, agents, succcessors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Add the following to the end of paragraph 2(a):

"Also notify these employees in writing of said expunction, and that evidence of the discriminatory suspensions will not be used as a basis for future personnel actions against them."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] In accord with *Sterling Sugars*, 261 NLRB 472 (1982), we shall require Respondent not only to expunge from its records references to the unlawful discipline herein, as recommended by the Administrative Law Judge, but also to notify employees in writing that this has been done and that evidence of the unlawful discipline will not be used as a basis for future personnel actions against them.

[2] *Id.* 103 S.Ct. at 1477.

[3] *Id.* 103 S.Ct. at 1475–77.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discriminate against our employees by giving more severe discipline to union officials than to other employees because of their status as union representatives.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL rescind the discriminatory suspensions given to R. Nummerdor, L. Mattzela, H. Joslin, E. Macario, H. Flickema, R. Hamel, R. Neiser, C. Hain, R. Snell, C. Doom, K.

DeWolfe, R. Zimmer, G. Conklin, J. Conley, D. Lawrence, E. Rewalt, L. Gerard, H. Myers, R. Rebedew, M. Judd, C. Goodman, M. Brackenrich, C. Schotts, W. Lawson, W. Poole, D. Collis, R. DeWolfe, D. Doom, R. Anderson, T. Smith, M. LaFlame, D. Keller, R. Fairfield, and R. Osborne for their participation in the strike of 18 October 1979, and WE WILL expunge from their records any reference to those suspensions, and WE WILL notify them in writing that this has been done and that evidence of the unlawful suspensions will not be used as a basis for future personnel actions against them.

WE WILL make the above-named employees whole for any loss of pay they suffered by reason of our discrimination against them, with interest.

BRUNSWICK CORPORATION

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge: Upon a charge filed on March 3, 1980, by Local Lodge 1813 of the International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter called the Union, a complaint was issued by the General Counsel on December 16, 1980, alleging that Respondent Brunswick Corporation violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (the Act), by disciplining specified union officers and representatives more severely than other employees who participated in a strike. Respondent denies the allegation.

A hearing was held in Muskegon, Michigan, on August 13, 1981. Upon the entire record in the case, including my observation of the demeanor of the witnesses and consideration of Respondent's brief, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Delaware corporation engaged, as here pertinent, at Muskegon in the manufacture of bowling equipment and related products. The complaint alleges, the Respondent admits, and I find that at all times material herein Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that the Union has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The facts in this case are not in dispute, having been submitted into evidence, for the most part, by stipulation. Respondent and the Union were parties to a collective-bargaining agreement which contains a no-strike clause.[1] On October 17, 1979, some of Respondent's employees ceased working admittedly in violation of this clause. To no avail, these employees were beseeched by their foremen, supervisors, and union officers for 45 minutes to return to work. Then Respondent's industrial relations manager, Orin Wolters, advised the Union's president, Richard Nummerdor, and Chief Steward Chester Doom that employees who did not return to work within a specified time would be disciplined. Union officials and supervisors passed this message on to the employees, some of whom returned to work at that point. The remainder returned shortly after that when they were assured that management would accept their grievances or complaints. Later that day, Wolters advised Nummerdor that Respondent was going to discharge the 13 employees who did not initially return to work and that 26 employees would be suspended.[2]

A strike, admittedly in violation of the no-strike clause, took place at the involved facility on October 18, 1979, in protest of the discharges. Only a few union officials and/or representatives reported for work that day[3] but they left work before the end of their shift without first obtaining permission from management. A picket line was set up. Wolters spoke with Nummerdor and Doom in front of the main gate at the Laketon Avenue plant and instructed them to talk to the employees that were in a group to go back to work. Wolters also direct-

[1] The agreement (G.C. Exh. 2) was effective from January 10, 1978, to January 9, 1981, and, as here pertinent, contains the following:

> 6.01 The Union agrees that during the life of this Agreement, neither it nor its officers, representatives, Committeemen, Stewards, nor its members will for any reason, directly or indirectly, call, sanction, or engage in any strike, walkout, slow-down, sit-down, stay away, limitation of production, boycott of a primary or secondary nature, picketing or any other form of interference with the peaceful operation of the business of the Company. The Company agrees that during the terms of this Agreement, it will not lock out any of the employees covered by this Agreement.
>
> 6.02 If any individual employee or group of employees violates the previous Paragraph, he or they may be summarily dealt with by the Company, at its discretion, by reprimand, layoff without pay, suspension, demotion, or discharge, and any appeal to the Grievance Procedure relative to such action by the Company shall be limited as to whether or not the employee did violate Paragraph 6.01 of this Article. The Parties agree that discharge is an appropriate penalty for violation of Paragraph 6.01 of this Article in any case, but this shall not be interpreted to preclude reinstatement and restoration of seniority with back pay in a case where it is established that the discharged employee did not in fact engage in or participate in a violation of Paragraph 6.01 of this Article.

[2] The 13 discharged employees were reinstated without backpay on January 22, 1980, and it was subsequently determined by the Administrative Law Judge in *Brunswick Corporation and Eldan Crawford*, Case 7-CA-17307, that the involved discharges did not violate Sec. 8(a)(1) of the Act. No exceptions were filed to his decision and it became the decision of the Board.

[3] Those who reported for work that day included Harry Flickema, a union sentinel, Richard Neiser, a union trustee, and John Conley and Eugene Rewalt, both grievance committee members.

ed Nummerdor and Doom to go back to work and Doom responded that he did not know if they could do that. Nummerdor walked out to the picket line and told employees that it was an illegal strike not sanctioned by the International; and that they should report for work.[4] Neither Nummerdor nor other employees returned to work until October 30, 1979.

The following day Respondent sent union members a letter citing the above-described no-strike language of the agreement and directing the employees to return to their job and shift on Monday, October 22, 1979.

On October 22, 1979, Wolters forwarded the following letter to Nummerdor:

> Since October 17, 1979, members of Local Lodge 1813 have been involved in an illegal work stoppage in direct violation of Article 6 of the labor agreement.
>
> That Article provides:
>
> Local Lodge 1813 has advised its membership that the work stoppage is illegal and to return to work.
>
> Brunswick Corporation requests that Local Lodge 1813 take the following affirmative action necessary to terminate this illegal work stoppage:
>
> 1) Direct all members of Local Lodge 813 to return to work immediately in writing.
>
> 2) Direct all Union Officers, Executive Board Members, Grievance Committee, and Stewards to report to their department and shift of work, effective 7:00 A.M. Tuesday, October 23, 1979.
>
> 3) Direct the above referenced Union Representatives to actively encourage all members of Local Lodge 1813 to terminate their illegal work stoppage.
>
> 4) Advise the Company of Local Lodge 1813's intent to take the above affirmative action necessary to terminate this illegal work stoppage.
>
> Should Local Lodge 1813 decide not to take the above affirmative action and take all positive measures to terminate this illegal work stoppage, the Company shall pursue damage action against the responsible parties.[5]

The following letter was forwarded by the Union to its members on October 23, 1979:

> Dear Member:
>
> This is to advise you that the International Association of Machinists and Local Lodge 1813 does not authorize or condone the illegal work stoppage at the Brunswick Corporation.
>
> You are hereby instructed to return to work immediately.

Six days later, October 29, 1979, the United States District Court for the Western District of Michigan, Southern Division, issued a preliminary injunction ordering, *inter alia*:

> 1. That Local Lodge 1813 of the International Association of Machinists and Aerospace Workers, AFL-CIO, its officers, directors, agents, employees and members, and all persons acting in concert with them or in their behalf, are enjoined from organizing, conducting, or in any way engaging in or inducting any strike, work stoppage, stay away, slow down, limitation of production or picketing at the Plaintiff's premises, or ratifying, condoning or lending support to any such action.
>
> 2. That Local Lodge 1813 of the International Association of Machinists and Aerospace Workers, AFL-CIO, its officers, directors, agents, employees and members, and all persons acting in concert with them or in their behalf, are ordered to exercise all of their authority, power, and influence to obtain compliance with this Court's order by, inter alia:
>
> a) Returning to and engaging in work at Plaintiff's premises in the customary and usual manner at the next regularly scheduled work shift,
>
> b) Posting copies of this Order forthwith in conspicuous places where the business and affairs of Local Lodge 1813 are customarily communicated to its members,
>
> c) Purchasing conspicuous space forthwith in The Muskegon Chronicle for three consecutive days for the purpose of forcefully encouraging the Union membership to return to work in accordance with the terms of this Order, and for the purpose of informing the membership that the officers, directors and other officials of Local Lodge 1813 will be respecting and complying with this Order.[6]

The following appeared in the Muskegon Chronicles on the next day:

> BRUNSWICK EMPLOYEES
>
> ALL MEMBERS OF LOCAL 1813 ARE ORDERED BACK TO WORK ON THEIR RESPECTIVE SHIFTS IMMEDIATELY.
>
> EXECUTIVE BOARD
> LOCAL 1813

[4] Nummerdor testified that he never instigated or encouraged employees to strike from October 18 to October 30, 1979; and that to his knowledge only one union official, Dee Lawrence (a grievance committee member), was on the picket line. A newspaper article which, *inter alia*, quotes a statement allegedly made by Lawrence was introduced by Respondent. Resp. Exh. 4. Obviously the article is hearsay.

[5] By mailgram, the executive board of the Union advised Wolters that it was making every possible effort to comply with the mandates set forth in the letter.

[6] *Brunswick Corp. v. Local 1813 of Machinists and Aerospace Workers, AFL-CIO; Richard Nummerdor, Chester Doom, and Dee Lawrence*, File No. G79 615 CA6. The court went on to state that the preliminary injunction was conditioned upon Brunswick Corporation's representation that a certain 13 employees discharged on or about October 17, 1979, shall be reinstated without backpay and without loss of seniority as of January 2, 1980, and that such suspension shall not be subject to the grievance and arbitration procedure.

Rank-and-file employees who did not picket received a written reprimand for going out on strike. On the other hand, Respondent suspended for 3 days without pay those rank-and-file employees who were seen picketing.[7]

Certain union officers and/or representatives were advised by Respondent that they did not fulfill their leadership responsibilities to end the illegal strike by returning to work; that their absence from work and lack of affirmative action had a negative effect on the membership and prolonged the illegal strike; and that they were suspended from work without pay for a period of either 5 or 10 days as a disciplinary action for their participation in the illegal strike.[8]

B. *Contentions*

The General Counsel, at the hearing, argued that the Board, in *South Central Bell Telephone Co.*, 254 NLRB 315 (1981), was presented with a factual situation similar to the one at hand, *viz*, union officers were given additional discipline beyond rank-and-file employees, and there a majority of the three-member panel refused the invitation of Respondent therein to overrule the Board's recent cases finding that greater discipline of union officers for participating in illegal strikes is discriminatory under Section 8(a)(3) of the Act.[9]

On brief, Respondent contends that to avoid being sued for damages, a union will maintain the surface position that the strike is illegal while at the same time its officials subtly advise the membership to stay out by their own refusal to return to work. The officials, it is contended, simply by reason of their office, become the leaders and proponents of the illegal strike. Respondent argues that if the Board refuses to allow the Employer the right to attempt to obtain compliance with its labor agreement by all reasonable means, including the disciplining of the illegal strike leaders, then the labor contracts are worthless and the industrial peace is destroyed.

It is urged that it be concluded that union officials simply by violating the collective-bargaining agreement become the leaders and proponents of those violations and thereby expose themselves to disciplinary measures, which may exceed the disciplinary measures issued to rank-and-file members for the same violation.

In the alternative, Respondent contends that the facts of this case differ from those recent Board decisions which hold the opposite because albeit the union officials herein were issued more severe discipline than some rank-and-file members, that discipline was less than other rank-and-file members who were originally discharged and then suspended without pay for 60 days for also violating the no-strike provision of the labor agreement.

Finally, it is pointed out by Respondent that while it could not find any circuit court of appeals decision upholding the recent majority decisions of the Board, the United States Circuit Courts of Appeals for the Seventh, Third, and Eighth Circuits have denied enforcement of the Board's decisions respectively in *Indiana & Michigan Electric Co. v. NLRB*, 599 F.2d 227 (7th Cir. 1979); *Gould, Inc. v. NLRB*, 612 F.2d 728 (3d Cir. 1979), cert. denied 449 U.S. 890; and *NLRB v. Armour-Dial, Inc.*, 638 F.2d 51 (8th Cir. 1981).

C. *Analysis*

Subsequent to the first two of the above-described courts of appeals decisions, the Board, citing a number of cases,[10] held in *South Central Bell Telephone*, 254 NLRB 315, 316–317 (1981):

> [I]t is a violation of Section 8(a)(3) and (1) of the Act for an employer to single out union stewards for discipline where the stewards merely participat-

[7] These employees were included in the charge filed herein but as indicated in his letter (Resp. Exh. 1) to the Union, Regional Director Bernard Gottfried refused to issue a complaint covering them. His stated reasons were as follows:

> Inasmuch as it has been determined in Case No. 7-CA-17307 that the work stoppage was violative of the contractual no-strike clause, thus unprotected, it follows that the Employer had the right to discipline employees who engaged in the said unprotected strike and/or related picketing. Moreover, the Employer had the right to select among employees in regard to the type of discipline issued, so long as it was not motivated by unlawful intent. The investigation failed to demonstrate such an unlawful intent in respect to the issuance of the three (3) day suspensions to certain employees, and, thus, the Employer's actions in this regard cannot be viewed as violative of the Act.

[8] The following individuals received the described suspensions:

R. Nummerdor, pres.—10 days
L. Mattzela, vice pres.—10 days
H. Joslin, recording secy.—10 days
E. Macario, financial secy.—5 days
H. Flickema, sentinel—5 days
R. Hamel, conductor—10 days
R. Neiser, trustee—5 days
C. Hain, trustee—5 days
R. Snell, trustee—10 days
C. Doom, chief shop steward—10 days
J. DeWolfe, timestudy steward—10 days
R. Zimmer, timestudy steward—5 days
G. Conklin, timestudy steward—10 days
J. Conley, grievance committee—10 days
D. Lawrence, grievance committee—10 days
E. Rewalt, grievance committee—5 days
L. Gerard, dept. steward—5 days
H. Myers, dept. steward—5 days
R. Rebedew, dept. steward—5 days
C. Goodman, dept. steward—5 days
M. Brackenrich, dept. steward—5 days
C. Schotts, dept. steward—5 days
W. Lawson, dept. steward—5 days
W. Poole, dept. steward—5 days
D. Collis, dept. steward—5 days
R. DeWolfe, dept. steward—5 days
D. Doom, dept. steward—5 days
R. Anderson, dept. steward—5 days
D. Slater, dept. steward—Written warning
T. Smith, div. committeeman—5 days
M. LaFlame, div. committeeman—5 days
D. Keller, div. committeeman—5 days
R. Fairfield, div. committeeman—5 days
F. Osborne, div. committeeman—5 days

[9] The majority consisted of then Chairman Fanning and Member Jenkins. Board Member Penello dissented.

[10] Cases cited by the Board are: *Bethlehem Steel Corp.*, 252 NLRB 982 (1980); *Gould Corp.*, 237 NLRB 881 (1978), enforcement denied 612 F.2d 728 (3d Cir. 1979); and *Precision Castings Co.*, 233 NLRB 183 (1977). *Midwest Precision Castings Co.*, 244 NLRB 597 (1979), was cited by the Board for the proposition that an employer does not violate the Act by holding a union steward to a higher standard of conduct than other employees in disciplining the steward for urging support of and inducting employee participation in an unauthorized, illegal work slowdown. The Board also cited *Indiana & Michigan Electric Co.*, 237 NLRB 226 (1978), enforcement denied 599 F.2d 227 (7th Cir. 1979).

> ed in an unprotected strike along with other employees. . . . that such different treatment of stewards must necessarily be based upon the stewards status as union officers rather than upon their conduct as employees . . . [if] the stewards had engaged in the same actions as other employees. . . . [and] that, where a steward . . . [has] not instigated or led an unprotected work stoppage, he . . . [can]not be disciplined for his "lack of actions as a steward" in failing to take steps to terminate the work stoppage.

Respondent suspended for 5 or 10 days without pay union officials who participated in the strike while it gave rank-and-file employees either a written reprimand or a 3-day suspension without pay depending on whether they picketed.

As indicated *supra*, Respondent on brief argues that union officials who go out on strike, simply by reason of their office, become the leaders and proponents of the illegal strike.[11]

The three courts of appeals cases cited by Respondent are distinguishable. In *NLRB v. Armour-Dial, Inc., supra*, the court concluded that union officials by their actions, not merely by the fact that they were union officials, induced the work stoppage involved therein. And both the Seventh and Third Circuit's decisions in *Indiana & Michigan, supra*, and *Gould, supra*, respectively, rested on what the courts viewed as the violations by union officials of an affirmative duty imposed on them by the involved collective-bargaining agreements. The collective-bargaining agreement involved herein does not contain language similar to that found in *Indiana & Michigan, supra*, and *Gould, supra*, which, according to those courts, imposes an affirmative duty on the involved union officials.

In *C. H. Heist Corp. v. NLRB*, 657 F.2d 183 (7th Cir. 1981), a panel different than the one which decided *Indiana & Michigan, supra*, characterized the contractual basis for the union officials' higher responsibility in *Indiana & Michigan, supra*, as "tenuous" and it refused to construe *Indiana & Michigan, supra*, so broadly so as to permit an employer to discharge a union steward, who although he refused to cross the picket line (there was no clear and contractual provision requiring him to cross the picket line), in the court's view made sufficient efforts to see that the no-strike clause of the involved collective-bargaining agreement was complied with.[12]

In *Hammerhill Paper Co. v. NLRB*, 658 F.2d 155 (3d Cir. 1981), the court held that, where the collective-bargaining agreement does not authorize the employer's selective disciplining of union officials, the disciplining violates Section 8(a)(3) of the Act.[13]

Simarily in *Metropolitan Edison Co. v. NLRB*, 663 F.2d 478, 482 (3d Cir. 1981), the court concluded that:

> If the collective bargaining agreement does not specify that union officials have some responsibility to try to end an illegal work stoppage, then the company may not impose any greater discipline on union officials than on other participants in the strike.

The court went on to state that since the involved agreement "did not expressly impose a duty on the union officials to attempt to halt an illegal work stoppage, the company committed an unfair labor practice when it disciplined . . . [union officials] more harshly than the other participants in [the] work stoppage . . . ." *Id.* at 483.

It would appear, therefore, in a situation such as the one at hand, where the union officials merely participated in the strike and where the involved collective-bargaining agreement does not expressly impose a duty on the union officials to attempt to halt the strike, courts have supported the Board's position that the respondent violates Section 8(a)(3) and (1) of the Act by singling out

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[11] Respondent's alternative argument has no merit in that those rank-and-file members who were originally discharged and then suspended without pay for 60 days were involved in a separate incident, although their punishment was the cause of the involved strike. It has not been demonstrated that any union officials or representatives participated in the October 17 work stoppage. The involved suspensions of the union officials and/or representatives were meted out not because of their conduct on October 17 but rather because of their position as officials or representatives of the Union.

[12] The court pointed out that

> The Board contends that the "higher responsibility" should not include an obligation to cross a picket line which is honored by the vast majority of the employees, because crossing the line would cause the steward to lose both credibility and the ability and opportunity to mediate a resolution of the strike. Conversely, the Company contends, *rather unrealistically*, that if the steward cross the line, the strike might end. [*Id.* at 182.] [Emphasis supplied.]

[13] It was concluded by the court that the Board's argument was persuasive.

While one member of the majority indicated that he did not mean to show any lack of support for the same circuit's decision in *Gould, supra*, and its underlying reliance on the Seventh Circuit's reasoning of *Indiana & Michigan, supra*, the other, in his concurring opinion, stated that

> I believe that this court's opinion in *Gould* was far too expansive and ladened with dicta which stated precepts far beyond the unique facts of that case, but *Gould* is the rule of our circuit unless and until it is changed by the full court setting *en banc*. I question the *Gould* court's reliance on the Seventh Circuit's decision in *Indiana & Michigan Electric Co.* . . . . [*Id.* at 167.]

The court specifically refused to broaden *Indiana & Michigan, supra*, to allow employers to mete out harsher punishment to union officials who merely participated in illegal strikes regardless of the language of their collective-bargaining agreements.

The court went on to state its belief that this type of discrimination against union officials

> could readily have an adverse effect on employee rights. The mere office thus [becomes] a burden, unilaterally imposed by the employer, even under circumstances where the office carried no extra burden under the terms of the contract. The holding of union office, after all, is the essence of protected union activities; union status may not, without more, be treated by employers as an open invitation for sanctions. All other things being equal, the marginal effect of this burden would be to "discourage members from holding union office" and thus "no doubt have an inherently adverse effect on employee rights." [*Id.* at 163.]

This problem was graphically pointed out by the Administrative Law Judge in *Miller Brewing Co.*, 254 NLRB 266, 280 (1981), of his Decision where he stated

> it should be noted that the discharges of the two stewards [which the Judge and the Board found to be discriminatory because they were based on union related considerations] have actually discouraged all of the remaining electricians . . . to decline to serve as stewards, and has effectively deprived the unit of its full statutory and contractual right to representation in matters requiring or calling for the presence or participation of stewards.

union officials for treatment different than other employees, based solely on their status as union representatives.

While union officials cannot be discriminated against merely because of their position, on the other hand they cannot be favored in a situation such as the one at hand. One union official, Lawrence, picketed during the strike. Consequently he should have received the same 3-day suspension picketing rank-and-file members received. *Miller Brewing Co., supra,* and *Bethlehem Steel Corp.*, 252 NLRB 982 (1980), enforcement denied *sub nom. Fournelle v. NLRB* (Nos. 80-2211 and 80-2466), 109 LRRM 2441 (D.C. Cir. 1982).

CONCLUSIONS OF LAW

1. By giving more severe discipline to the individuals described in footnote 8, *supra* (except D. Slater), than was given to other employees who participated in the illegal strike which began on October 18, 1979, solely because they were union representatives, Respondent has violated Section 8(a)(3) and (1) of the Act.

2. Respondent's violations of Section 8(a)(3) and (1) of the Act are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, it will be recommended that Respondent be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent discriminatorily assigned greater discipline to those individuals described in footnote 8, *supra* (except D. Slater), than to other employees who participated in the strike which began October 18, 1979, Respondent should be required to make them whole for any loss of pay they suffered by reason of this discrimination. Any backpay found to be due shall be computed, with interest, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[14]

Upon the basis of the entire record, the findings of fact, the conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[15]

The Respondent, Brunswick Corporation, Muskegon, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against its employees by giving more severe discipline to union officials than to other employees because of their status as union representatives.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Rescind the discriminatory suspensions given to R. Nummerdor, L. Mattzela, H. Joslin, E. Macario, H. Flickema, R. Hamel, R. Neiser, C. Hain, R. Snell, C. Doom, J. DeWolfe, R. Zimmer, G. Conklin, J. Conley, D. Lawrence, E. Rewalt, L. Gerard, H. Myers, R. Rebedew, M. Judd, C. Goodman, M. Brackenrich, C. Schotts, W. Lawson, W. Poole, D. Collis, R. DeWolfe, D. Doom, R. Anderson, T. Smith, M. LaFlame, D. Keller, R. Fairfield, and F. Osborne for their participation in the strike of October 18, 1979, and expunge from their records any reference to those suspensions.

(b) Make the above-named employees whole for any loss of earnings or other benefits they suffered as a result of the discrimination against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Muskegon, Michigan, copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[14] See, generally, *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[16] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."